

**U.S. Environmental Protection Agency  
and  
Nevada Division of Environmental Protection  
National Priorities List Deferral Agreement  
Anaconda Mine Site, Lyon County, Nevada**

**I. PURPOSE**

The U.S. Environmental Protection Agency (EPA), Region 9, conducted a preliminary assessment and site investigation of the Anaconda Mine Site (Site) located in Lyon County, Nevada, Comprehensive Environmental Response and Liability Information System (CERCLIS) ID #NVD083917252, and determined that it qualifies for placement on the National Priorities List (NPL).

On December 22, 2015, EPA sent a letter to the State of Nevada Governor's Office, which indicated its intent to list the Site on the NPL pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA) and requested the State of Nevada's position on listing. (Attachment A). The Governor's Office responded in a letter, dated January 29, 2016, that the State was pursuing an alternative path to listing through a private party funding agreement and requested up to and including April 29, 2016, to make a decision on listing the Site. (Attachment B). The Governor's Office sent a letter on March 29, 2016, which offered the State's conditional concurrence with EPA's proposal to list the Site. (Attachment C). In September 2016, EPA proposed the Site to the NPL.

After initial discussions in December 2016 and January 2017 between EPA, NDEP, the Bureau of Land Management, and Atlantic Richfield Corporation, and after reviewing with the Yerington Paiute Tribe, the Walker River Paiute Tribe, Lyon County and City of Yerington representatives, *EPA made a decision in February 2017 to postpone listing of the Site on the NPL while all parties evaluated deferral options for a private funding solution. Between February and June, 2017, NDEP and ARC developed a proposal for deferral of the Site from NPL listing. NDEP conducted outreach with community stakeholders, including Lyon County, the City of Yerington, the Yerington Paiute Tribe, the Walker River Paiute Tribe, and interested citizens. NDEP and ARC have entered agreements that satisfy criteria for deferral of the Site as described in EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions."* On July x, 2017, NDEP formally requested EPA deferral of Site under CERCLA § 105(h).

Based on ARC and NDEP meeting required deferral criteria, EPA is deferring the final listing of the Site on the NPL while NDEP completes necessary investigations and response actions at the Site. Once the required response actions at the Site are successfully completed, it is expected that EPA will have no further interest in considering the Site for listing, unless there is a release or potential for release that poses an imminent threat to human health or the environment. In addition, when response actions are completed, the Site will be removed from the CERCLIS.

This Deferral Agreement describes the steps NDEP will take to ensure that adequate response actions are completed at the Site.

**II. IMPLEMENTATION**

A. State Program – NDEP is authorized under state water pollution control law (NRS 445A) and hazardous substance control law (NRS 459) to implement a soil and

groundwater cleanup and mine reclamation program which should ensure that the response actions at the Site are carried out and that these actions are protective of human health and the environment. Furthermore, NDEP has sufficient capabilities, resources, expertise and authorities to ensure that a CERCLA-protective cleanup<sup>11</sup> is conducted and to coordinate with EPA, BLM, the Yerington Paiute Tribe and Walker River Paiute Tribe (Tribes), other interested agencies, and the public on different phases of implementation.

B. Site Eligibility – The State has expressed interest in having the Site listing deferred and in NDEP overseeing the response at the Site under state law. NDEP agrees to pursue response action at the Site in a timely manner. EPA and NDEP agree that a deferral should address the Site sooner than, and at least as quickly as, EPA would expect to respond.

The Site is included in the CERCLIS inventory and has been assessed and scored for listing on the NPL. The State will not request, nor utilize, Federal trust fund money to implement any portion of the actions required by this Deferral Agreement.

C. Community Acceptance – NDEP provided outreach to the community and the Tribes. [Placeholder]. (Attachment).

D. CERCLA Protective Cleanup – NDEP will pursue a CERCLA-protective cleanup of the Site that will be substantially similar to a CERCLA response. The response action will be protective of human health and the environment, as generally defined for individual human exposure by an acceptable risk level for carcinogens between  $10^{-4}$  and  $10^{-6}$  (using  $10^{-6}$  risk level as the point of departure for determining remediation goals for alternatives) and for non-carcinogens a Hazard Index of 1 or less, and no significant adverse impacts to ecological receptors. The response action(s) will also treat hot spots of contamination to the extent feasible. NDEP will give preference to solutions that will be reliable over the long term. In addition, NDEP will ensure that any remedy selected at the Site will comply with all applicable or relevant and appropriate<sup>2</sup> federal requirements and more stringent applicable or relevant and appropriate State requirements to the maximum extent practicable under NDEP's state authorities.

An evaluation of environmental media, exposure pathways, and human and ecological receptors will be investigated and assessed as part of the comprehensive risk assessment conducted at the Site. EPA anticipates that the CERCLA-protective remedy includes the recognition that groundwaters within the United States are valued natural resources, and that response actions will ensure the remedies are protective by restoring contaminated groundwater to beneficial uses within a reasonable time frame, given the particular site circumstances.

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<sup>1</sup> The term CERCLA-protective cleanup is defined in OSWER Directive 9375.6-11, *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (May 3, 1995), and further explained in § II(D) of this Deferral Agreement.

<sup>2</sup> The phrase “applicable or relevant and appropriate requirements” shall be defined by reference to Section 121 of CERCLA, 42 U.S.C. § 9621, the National Contingency Plan (see 40 C.F.R. § 300.5 definitions of “applicable requirements” and “relevant and appropriate requirements”), and applicable EPA Guidance.

E. Natural Resources Trustees – NDEP will promptly notify the appropriate state and federal trustees for natural resources of discharges and releases at the Site are injuring or may injure natural resources, and include the trustees, as appropriate, in activities at the Site. NDEP shall, consistent with CERCLA and the National Contingency Plan, seek to coordinate necessary assessments, evaluations, investigations, and planning with the State, Tribes, and Federal trustees.

F. Tribal Participation – NDEP has reviewed and revised NDEP/Tribal consultation protocols with all Tribal governments that have elected to participate in the response actions. In lieu of a federally funded technical assistance grant or similar funding mechanism, NDEP has reached an agreement with ARC that provides the Yerington Paiute Tribe with reasonable financial assistance, to support and facilitate interpretation of technical information and participation in remedy selection until issuance of a future Record of Decision

### III. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities – NDEP has responsibility, with minimal EPA involvement, to provide for a timely CERCLA – protective cleanup under state authority and to support the public’s right of participation in the decision-making process. EPA’s role will generally be limited to review of NDEP’s semi-annual and annual reports and consultation on the proposed remedy. However, EPA may request reports, data, or other documentation related to the remedial activities at the Site, as it deems appropriate, or arrange for NDEP to provide certain draft documents for EPA’s review as they are prepared. EPA will not provide financial assistance for site activities to the State, Tribes, or the community during deferral.

In the event that community members or the Tribes develop significant and valid concerns to the response actions implemented by NDEP, they may request that EPA reconsider deferral of the Site or request EPA’s intervention in response actions. EPA will meet with NDEP to discuss these concerns and to review the response actions in light of this Deferral Agreement, the Tribal Consultation Protocol(s), and EPA’s NPL Deferral Guidance, and make a decision whether terminating the deferral is warranted.

B. Schedule for Performance – A proposed schedule of events for the Site cleanup is set forth in the following table. The dates in the table are subject to change. EPA shall be notified of a change in Target Completion Date as soon as NDEP becomes aware that such a change is necessary or unavoidable.

Task	Target Completion Date


C. Documentation Submissions to EPA – NDEP will make available all Site data, reports, and other documents to EPA upon request.

D. Reporting to EPA – NDEP will provide management briefings to EPA at least annually on whether the conditions in the Agreement are being met and the progress in the investigation, assessment, and response actions. In addition, NDEP will report to EPA at least semi-annually on any difficulties that it is having meeting the conditions of the Agreement. Following the submission of a report required or requested, EPA may request a briefing or meeting with NDEP to discuss the report(s).

E. Proposed Remedial Action – NDEP will brief EPA on proposed remedial actions (Draft Record of Decision Staff Report) before and after soliciting public comment.

#### IV. COMMUNITY PARTICIPATION

NDEP will ensure public involvement that is substantially similar to the intent of the National Contingency Plan, in accordance with the Community Involvement and Participation Plan finalized for the Site. NDEP will prepare a draft Community Involvement and Participation Plan (Plan) within 90-days after this Deferral Agreement is executed. The public will have 30 days to review the Plan and provide comments. NDEP will prepare a final Plan 45 days after the public review and comment period closes. The Plan will be designed to satisfy the requirements of the NPL Deferral Guidance, NDEP's regulations, and the unique needs of the Site and surrounding community. NDEP will also ensure the following actions are undertaken:

A. Site files will be maintained at NDEP offices located at 901 South Stewart Street, Carson City, Nevada 89701.

B. Site related documents will be available at one or more locations near the Site.

C. Site related information will be provided to community groups.

D. Through the Plan, the affected community will be able to acquire technical assistance in interpreting information with regard to the nature of the hazard, investigations, and studies conducted, and implementation decisions at the Site.

#### V. COMPLETION OF STATE RESPONSE ACTION

Certification and Confirmation – Once NDEP considers the response action at the Site to be complete, it will certify to EPA, the Tribes, and the affected community that the remedy has been successfully completed and intended cleanup levels achieved. As part of the certification, NDEP will submit for EPA's review a response action completion

documentation substantially similar to that described in the June 1992 OSWER Direct "Remedial Action Report; Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS).

EPA will review the certification and supporting information, and may choose to initiate a deferral completion inquiry to confirm the certification. EPA will work with NDEP to address any data deficiencies hindering the confirmation and agree to a time frame for completion of the inquiry. If the response at the Site is confirmed as complete, the Site will not be further evaluated for NPL listing unless EPA receives information of a release or potential release at the Site which poses a significant threat to human health or the environment. Upon completion of response actions and confirmation by EPA, the Site will be removed from CERCLIS.

## VI. AGREEMENT TERMINATION AND MODIFICATION

EPA may terminate this Deferral Agreement at any time after providing 30 –days notice to NDEP. This Deferral Agreement may be terminated if the response is not CERCLA–protective, is unreasonably delayed, inconsistent with this Deferral Agreement, does not adequately address significant and valid concerns of the affected community or Tribal governments with whom NDEP has a Consultation Protocol, or for other appropriate reasons, such as the State's inability to enforce compliance or the absence of appropriate funding to complete the response action. NDEP may also choose at any time, after 30–days notice to EPA, to terminate this Deferral Agreement for any reason. During any 30–day notice period required by this paragraph, EPA and NDEP agree to meet to discuss the decision to terminate this Deferral Agreement.

Upon termination of this Deferral Agreement, EPA will consider taking any necessary response action including initiating the rulemaking process to formally list the Site on the NPL. EPA and NDEP will coordinate efforts to notify the community of the termination of the deferral or this Deferral Agreement. These actions will assure the public that EPA will continue to respond at the Site. At EPA's request, NDEP will provide to EPA all information in its possession regarding the Site to the extent permitted by State law.

This Deferral Agreement adheres to EPA's "Guidance of Deferral of NPL Listing Determinations While State's Oversee Response Actions" dated May 3, 1995. Furthermore, this Deferral Agreement may be modified at any time upon agreement of both parties. Notwithstanding any provision of this Deferral Agreement, EPA and NDEP retain their respective authorities and reserve all rights to take any and all response actions authorized by law.

## VII. AGREEMENT APPROVALS

DATED this \_ day of \_\_\_\_\_, 2017.

DATED this \_\_day of \_\_\_\_\_, 2017.

BY: \_\_\_\_\_  
GREGORY LOVATO  
Administrator  
State of Nevada  
Division of Environmental Protection

BY: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]  
U.S. Environmental Protection Agency  
Region 9

#### ATTACHMENTS

- A. Letter, dated December 22, 2015, from the U.S. Environmental Protection Agency to the Honorable Brian Sandoval, Governor of Nevada.
- B. Letter, dated January 29, 2016, from the Honorable Brian Sandoval, Governor of the State of Nevada to the U.S. Environmental Protection Agency.
- C. Letter, dated March 29, 2016, from the Honorable Brian Sandoval, Governor of the State of Nevada to the U.S. Environmental Protection Agency.
- D. [Placeholder for additional attachments]